1947. K File No. B. Dist & City Police 147 Part-I and II

Legal DEPARTMENT

B. BRANCH

Subject:— A Bill to amend the City of Bombay Police Act 1902

Bom Act- No LIX of 1947

Part I and II Combined

P.P.1 / E

File No. B. Dist and City Police 147 Part- I and II.

Std. Sectt. Slip 4 B c.

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C O N T E N T S.

Home Department File No. 8 Distt. A City Police/47.

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10.	U.R. to H.D. No. 869, dt. 31-1-46.	Consolidated draft bill.	19-20.
11.	U.R. to H.D. No. 9342, dt. 21-12-46	Amendment of Sec. 52(1)(f) Requirement of the previous sanction of the Governor.	21-22.
12.	U.R. to H.D. No. 2301, dt. 19-3-47.	Sec. 813 of Cr. P. C. Powers to police officer in mofussil under.	23-24.
13.	U.R. to H.D. No. 155, dt. 7-1-47.	Sec. 6. Amendment of.	25-26.
14.	U.R. to H.D. No. 3301, dt. 6-12-46.	Sec. 6(1) Amendment f.	27-28.
15.	U.R. to H.D. No. 1840, dt. 14-2-47.	Revised draft Bill	29-30.
16.	U.R. to H.D. No. 1034, dt. 29-1-47.	Draft Bill.	31-32.
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18.	U.H. to H.D. No. [illegible] 7505, dt. 31-1[illegible]-16.	Draft Bill.	37-38.
19.	H. . to H.D. No. 6637, dt. 27-6-17.	Draft Omnibus Bill.	39-42.
30.	U.H. to H.D. No. 125-., dt. 6-10-17	Renewing the Bill for the consideration of the Governor-General.	43-44.
31.	U.H. to H.D. No. 13006, dt. 16-12-17.	Enacting of the Bill.	45-47.
32.	C.L.I.H. No. 11633, dt. 4-12-17.	Locking Cove or's as ent.	49-51.
33.	L.D. H.D. No. 16071, dt. 15-12-17.	Repugnacy of the Bill.	53-54.
34.	L.D. H.D. No. 710, dt. 10-1-18.	Governor-General assent.	55-56.
35.	G.E. L.D. No. 86-L, dt. 1-10-17.	Publication of the Bill.	57-66.
36.	G.H. L.D. No. 710, dt. 20-1-18.	Publication of the Act.	67-68.
37.	————	Debates.	

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Office of the R.L.A.

A copy of the judgment in the Criminal Revision Application No. 369 of 1939 is appended. It is desirable to amend section 6 of the Bombay District Police Act, 1890, to provide for empowering the Additional Superintendent of Police and to exercise the powers of District Superintendent of Police under any law as suggested by the Under Secretary, Home Department, in his note dated the 5th December 1939 at page 4 ante. The amendment may be made as under:-

"In sub-section (1) of section 6 of the Bombay District Police Act, 1890, after the words "this Act" where they occur for the first time the words "or under any other law for the time being in force" shall be inserted."

3. It seems desirable to amend the last paragraph of sub-section (1) of the section 6 introduced by Bom. III of 1939 on similar lines. If this suggestion is accepted by the Home Department the amendment may be made in the following form:-

"In sub-section (1) of section 6 of the Bombay District Police Act, 1890, after the words "this Act" wherever they occur, the words "or under any other law for the time being in force" shall be inserted."

Remembrancer of Legal Affairs.

U. O. to the H. D., No. 1396, dated the 5th February 1940.

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Office of the Legal Affairs.

A revised draftBill and Statement of Objects and Reasons are appended. The draft Bill provides that the amount of surcharge shall not be recovered from persons who are exempted from payment of the compensation under sub-section (2) of section 45 of the City of Bombay Police Act, 1902.

2. The Bill, if it is to be introduced in the legislature after the revocation of the proclamation made under by Governor under section 93 will require recommendation under section 88 83(1)(a) and previous sanction of the Governor under section 108(2)(ii) of the Government of India Act, 1935.

3. As desired by Secretary, H.D., it has been made clear in the draft provision in new section 45B that the municipality would be entitled to obtain the surcharge.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 803. dated the 20th January 1940.

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Office of the R. L. A.

The Provision in sub-section (2) of section 45 of the City of Bombay Police Act, 1902, under which cert-in persons are exempted from paying any portion of compensation in a statutory provision. The rodors stated tohave been issued by Government in G.R., H.D., No. 9030/3(C), dated the 13th October 1938, are non-statutory. As long as the provision in subsection (2) of section 45 in regard to the granting of such exemption stands it will be necessary to make a similar provision in regard tothe amount of surcharge proposed to be collected.

2. Section 46 of the Act provides for the manner in which the amount recoverable under section 45 shall be recovered. The proposed addition providing for recovery of a surcharge which is a substantive provision does not appear to fit in that section. It is desirable to have a separate provision for this purpose as in the draft Bill at pages 349-351 ante.

Remembrancer of Legal Affairs.
Registrar

U.R. to H.D., No. 1430, dated the 6th February 1940.

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Office of the P.I.A.

The requisite draft Bill is sent herewith. The clause of the Bill are generally explained by the reference & (noted marginally against them) to the H.D. Propositions.

2. Clause 2(1)(c).- Proposition 4 at page 48 provides that the buildings and lands in His Majesty for the purposes of Central or Provincial Government shall be exempt from the riot tax. Under section 175 of the Government of India Act, 1935, all properties vesting in His Majesty which are immediately before the commencement of Part III of the Act in the possession etc. of the Governor-General in Council or any local Government shall, as from the commencement of Part III of that Act, vest in His Majesty.

(a) for the purposes of the government of the Federation (which includes government in relation to railways); or (b) for the purposes of the exercise of the functions of the Crown in its relation with Indian States; or

(c) for the purposes of the government of a Province.

Similarly under section 175(2) all propertyacquired for any of the purposes vests in His Majesty for those purposes. H.D. proposition 4 at page 48 does not refer to lands mentioned in clause (b); presumably H.D. does not intend to levy the riot tax in the case of such land. The expression "lands vesting in His Majesty" will include such lands.

3. Clause 2(5) inserts a new sub-section(3A)in section 45 of the City of Bombay Police Act, 1902 , making all functions of the Chief Presidency Magistrate under the said section subject to the general or special orders of Government. There is no legal objection to making such a provision.

4. The Bill has been framed in the light of the existing provisions of section 45 and 46 of the City of Bombay Police Act, 1902. These sections are however proposed to be amended by clause 9 and Schedule B of the Greater

Bombay Laws and the Bombay High Court (Declaration of Limits) Bill which also proposes to insert a new section 463 for the purpose of recovery of the riot tax by municipalities outside the City of Bombay, in the areas now proposed to be included in Greater Bombay. When that Bill is therefore enacted into law, the present Bill will require to be considerably modified. H.D. is therefore requested to examine the Bill in the light of the amendments proposed to be made by that Bill and decide whether any municipality other than the Municipal Corporation of the City of Bombay is also to be allowed to levy 8 per cent. of the riot tax for its services, whether any, and if so, what exemptions should be allowed in the case of the riot tax being levied by any other municipality as a tax or rate, whether riot tax should be made a charge on property if it is to be levied on property by such municipality and lastly whether the municipalities should be also have the power to write off irrecoverable amounts of the riot tax.

5. H.D. will no doubt attach the requisite Statement of the Bill.

6. The subject-matter of the Bill falls under entries 1,3, 13, and 31 in the Provincial Legislative List and entries 4 and 8 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. As clause 4 new section 463 provides that the right to compensation conferred on a person shall not be liable to seizure, attachment or sale by process of any court or to alienation, it is repugnant to the provisions in section 60 of the Code of Civil Procedure and to the Transfer of Property Act, which are existing Indian laws relating to entry 4 and entry 8 in the Concurrent List. It is therefore necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935 and para. (2) of the Proclamation. Under executive instructions the Bill requires the previous concurrence of the Governor-General.

Remembrancer of Legal Affairs.

L.R. to H.D., No. 4737, dated the 23rd June 1945.

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Office of the R. L. A.

The requisite draft Bill and a revised Statement are sent herewith.

2. The subject-matter of the Bill falls under entries 5 and 33 in List II of the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relates to any matte in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, it is not necessary to reserve it for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935, and paragraph (2) of the Proclamation. Under Executive Instructions the Bill requires the previous concurrence of the Governor-General (vide Governor's Secretary's Circulars No. 201(18) dated the 18th December 1939 and 23nd July 1941).

Remembrancer of Legal Affairs.

U. R. to H. D., No. 726, dated the 23rd January 1945.

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~~Affirmative legislation.~~

Office of the R.L.A.

There is no provisionin the City of Bombay Police Act, 1902, under which a person can be required to take out a permit for using a loudspeaker in a street or public place. To achieve the object in view it will be necessary to have recourse to legislation.

Remembrancer of Legal Affairs.

U. R. to H. D., dat No. 6834

dated the 18th September, 1948.

SVV
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Office of the R. L. A.

The requisite draft Bill as sent herewith. The statement at page 9 as slightly amended in inorder.

2. The subject-matter of the Bill falls under entries 1, 3, and 54 in List II of the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, it is not necessary to reserve it for the consideration of the Governor-General with reference to section 107(3) of the Government of India Act, 1935, and para. (2) of the Reclamation. Under Executive Instructions the Bill requires the previous concurrent of the Governor General.

Remembrancer of Legal Affairs.

U.O. to H. D., No. 8554, dated the 15th November 1945.

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Office of the S.J.G.

The High Court's judgment at page 3 in Criminal Revision Application No. 270 of 1964 has particular reference to the language of the bail order made by the Magistrate in that case. It appears from the judgment that the bail order required a personal bond plus one surety plus a cash deposit. This was in contravention of the Criminal Procedure Code, section 513 of which permits a cash deposit at the option option of the accused not in addition to but in lieu of executing a bond with or without sureties. As observed by Secretary H.D. in para. 2, of Minute at page 7 ante a proper bail order made by a court would cause no real difficulty. The order may require a bond with sureties and may add that at the option of the accused a named cash deposit may be in lieu of such bond with sureties. Since ex hypothesi the Court would ordinarily refuse to accept the sureties (produced in Bombay) as unsatisfactory, he accused must offer the cash deposit if he wishes to avoid the lock-up. No amendment of the Criminal Procedure Code appears necessary so far as the powers of any court are concerned. This is also true of the police officers in the mofussil since since section 513 of the Criminal Procedure Code applies to them and gives them the same power as it gives the court.

2. The only lacuna is in respect of the City Police of Bombay. Section 513 Cr. P. C. does not apply to the police of Bombay city by reason of the exclusion contained in section 1(2)(b) of the Cr. P. C. It is evidently on this account that the Commr. of Police now proposes amending the City of Bombay Police Act, 1902, the lacuna having been brought to notice rather pointedly by the High Court Judgment. Indeed an amendment of the City Police Act on the lines of section 513 Cr. P. C. would bring the law in the City of Bombay into line with that of the rest of the Province. The amendment is therefore desirable. The precise form of it will be settled

after Government decide on undertaking legislation to amend the City Police Act.

Remembrancer of Legal Affairs.

M. R. to H. D., No. 6710, dated the 12th December 1956.

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Office of the R. J. A.

The requisite amendment to the City of Bombay Police Act, 1902, and a revised Statement are sent herewith.

2. The subject-matter of the amendment falls under entry 3 in List II and entry 2 in List III of the Seventh Schedule to the Government of India Act, 1935. As the amendment is repugnant to the provisions regarding release on bond contained in chapter VI of the City of Bombay Police Act, 1902, which is an existin Indian Law relating to entry 2 in List III it is necessary to reserve it for the consideration of the Governor General with reference to paragraph (2) of the Proclamation and section 107 (2) of the Government of India Act, 1935. Under executive instructions, the legislation requires the previous concurrence of the Givernor-Genreal (Vide Governor's Secretary's Circulars No. 201(12), dated the 18th December 1939 and 22nd July 1941).

Remembrancer of Legal Affairs.

U. R. to H. D., No. 2510, dated the 31st March, 1945.

SVV
15/5/56

Office of the R L. A.

The requisite consolidated draft Bill and Statement are sent herewith.

2. The subject matter of the consolidated Bill falls under entries 1, 3, 13, 21, 28, 37 and 54 in List II and entries 2, 4 and 8 in List III of the Seventh Schedule to the Government of India Act, 1935. As clause 5- new section 46 C provides that the right to compensation conferred on a person shall not be liable to seizure, attachment or sale by process of any court or to alienation, it is repugnant to the provisions of section 60 of the Code of Civil Procedure and to the Transfer of Property Act, which are existing Indian laws relating to entry 4 and entry 8 in List III; and clause 7 - new section 109A - is repugnant to the provisions regarding release on bond contained in Chapter VI of the City of Bombay Police Act, 1902, which is an existing Indian Law relating to entry 2 in the said List III; it is therefore necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act and para. (2) of the Proclamation.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 859, dated the 31st January 1946.

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Office of the R.L.A.

The proposed amendm n of section 22(1)(f) of the City of Bombay Police A t, 1902 (Bom. IV of 1902), requires the previous sanction of the Governor under section 108(2)(ii) o the Government of India Act, 1935. It does not require any recommendation or affect any of the Governor's special responsibilities under section 52(1) of the said A t.

2. The preamble to the draft Bill furnished to the Home Department at page 13 ant e is not suitable for enactment by he Provincial Legislature. The Home Department will no doubt in due course show the draftBill to the R.L.A.

U. R. to H. D., No. 9342. dated the 21st December, 1946.

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Office of the R. L. A.

The draft at page 19 is on the lines of section 513 of the Criminal Procedure Code. That section permits a cash deposit at the option of the accused not in addition to but in lieu of executing a bond with or without sureties. The same powers are given to Police Officers in mofussil under section 513 ~~and~~ of the Code. But under that section a Court has first to refuse to accept sureties (produced in Bombay) as being unsatisfactory and to leave the alternative to the accused to offer cash deposit in order to avoid the lock-up. The same thing will have to be done by a Police Officer now in Greater Bombay under the proposed Bill. Thus the powers of the Police Officers in Greater Bombay will be on par with those of the Courts throughout the Province and of Police Officers in Mofussil. The Commissioner of Police, Bombay, in his letter at page 43 ante states that what is wanted under the City of Bombay Police Act, 1902, is not the power to enable the accused to offer a cash deposit in lieuof executing a bong but the power to enable the Police Officer to demand a cash deposit in addition to bail either from the accused or the surety. The proposal amounts to this that an additional powers of demanding a cash deposit either from an accused or his surety (which the Courts in Bombay and Police Officers in mofussil do not possess under the Criminal Procedure Code) is to be given to Police Officers in Greater Bombay. It is for the Home Department to decide administratively whether such additional power is absolutely necessary when the Court which grants a bail does not possess such power (vide the High Court Judgment at page 6 ante) and to obtain orders of Government in the matter. If Government decides in favour of grant of such power, legislation will be necessary to give effect to it.

Remembrancer of Legal Affairs.

U.O.R. to H.D., NO. 2301, dated the 10th March 1947.

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Office o[illegible] A.

No amendment of sectio 6 is necessary, in view of the words "or any other person" occuring in the second para. of section 6.

Proposed amendments of the District and City Police Acts are expedient.

Remembrancer of Legal Affairs.

U. R. to R. D., No. 155. dated the 7th January 1947.

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Office of the R. L. A.

Paragraph 6 of Home Department note at page 6.

The requisite amendment of section 6(1) of the Bombay District Police Act, 1890, is appended. Clause (ii) also amends the last paragraph of sub-section (1) of section 6 inserted by section 2 of Bombay Act III of 1939. This will enable the District Superintendent of Police to delegate to an Assistnt or Deputy Superintendent of Police not only his powers under the District Police Act but also under any other law for the time being in force. The Home Department should obtain the orders of Government in respect of the amendment of the last paragraph as sub-section (1) of section 6 also.

2. Paragraph 1 of Secretary, Home Department's note at page 7. Clause (i) amends section 6(1) of the Act for the purpose, although no amendment of the Act is strictly necessary.

3. Paragraph 7 of Home Department note at pages 6-7 ante. Please see Emperor vs Jaffer Mohamed (15 B.L.R. 106) The proposal made by the Inspector General of Police is to amend section 7 of the Bombay Prevention of Gambling Act, 1887 (Bom. IV of 1887), to remove the anomaly that the presumptive proof of keeping, or gaming in, a common gaming house which attaches to all tings seized by a Police Officer who enters any premises under section 6 of the Act with a special warrant does not hold good when the things are seized in a search conducted personally by authorities competent to issued such warrant under section 6 or under their personal supervision. It maybe observed that the old sections 6 and 7 of the Bombay Prevention of Gambling Act, 1887, with reference to which the judgment of the High Court in Emperor v. Jaffer Mohamed (15 B.L.R. 106) was given, have been substituted by fresh sections 6 and 7 by Bombay Act I of 1936, sections 5 and 6. The new section 6 inserted in 1936 empowers certain police officers to enter and search any place which they have reason to suspect as being used as a common gambling house and to seize the instruments. A consequential amendment was made in old section 7 of the Act, and under section 7,

as it now stands, the presumptive proof of keeping, or gaming in, a common gaming house now attaches to things seized in any house, room or place entered under section 6. It is not now, therefore, necessary that the house, room or place should be entered under warrant issued un der the provisions of the section 6. In the circumstances pointed out above, neither section 6 nor section 7 of the Bombay Preventionof Gambling Act needs amendment.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 8801, dated the 6th December, 1946.

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Amendment of section 6 of Bom. IV of 1890.

In sub-section (1) of section 6 of the Bombay District Police Act, 1890, Bom. IV of 1890,—

(i) for the words "an Additional Superintendent and such" the words "and such Additional Superintendents," shall be substituted;

(ii) after the words "this Act" wherever they occur, the words "or under any other law for the time being in force" shall be inserted.

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4 c.

Office of the R. .. ..

A revised draft Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902, is sent herewith.

2. The subject-matter of the Bill falls under entries 3 and 37 in List II in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter falling in List III in the said Seventh Schedule, it will not be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(3) of the said Act.

3. The Bill requires the previous sanction of the Governor under section 108(2)(ii) (ii) of the said Act. It does not require any recommendation or affect any of the special responsibilities of the Governor under section 52(1) of the said Act.

4. The Statement of Objects and Reasons at page 39 ante as amended is in order.

5. The R. D. may be informed that being found drunk in a public place, will not be an offence under the Bill.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 1549, dated the 14th February 1947.

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Office of the R. L. A.

The requisite draft of a Bill to amend the City of Bombay Police Act, 1902, is sent herewith.

2. The subject-matter of the Bill falls under entries 1, 3, 13, 39, and 42 of List II in the Seventh Schedule to the Government of India Act, 1935. As the Bill does not relate to any matter falling in List III in the Seventh Schedule to the said Act, it will not be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the said Act.

3. The Bill requires the previous sanction of the Governor under section 108(2)(ii). The Bill also requires his recommendation under section 82(1)(a) and sub-section (3) of section 82 of the said Act. It also affects his special responsibility under section 52(1)(a) of the said Act.

4. The Statement of Objects and Reasons at page 9 ante as amended is in order.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 1034, dated the 29th January 1947.

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Office of the R. L. A.

The requisite consolidated draft Bill is sent herewith.

2. The Subject-matter of the Bill falls under entries 1, 3, 13, 35, 37, 39 and 48 in List II in the Seventh Schedule to the Government of India Act, 1935 and entry 2 in List III in the said Schedule. As the Bill does not contain any provision repugnant to the provisions of any earlier Federal law or existing Indian law relating to any matter falling in List III in the said Seventh Schedule, it will not be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the said Act.

3. The Bill requires the previous sanction of the Governor under section 108(2)(ii) of the Government of India Act 1935. The Bill also requires his recommendation under section 82(1)(a) and sub-section (3) of section 82 of the said Act. It affects his special responsibility under section 52(1)(a) of that Act.

Remembrancer of Legal Affairs.

U. R. to H. D., No. 3866, dated the 18th April 1947.

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Office of the R. L. A.

The requisite draft Bill is sent herewith.

2. The subject-matter of the Bill falls under entry 35, read with entries 3 and 37, in the Provincial Legislative List, and entry 2 in the Concurrent Legislative List, in the Seventh Schedule to the Government of India Act, 1935. The Bill requires theprevious sanction of the Governor under section 108(2)(ii) of the Government of India Act, 1935. The Bill does not require any recommendation or affect any special responsibility of the Governor under the said Act.

3. The draft Statement of Objects and Reasons at page 29, as slightly amended, is in order.

Remembrancer of Legal Affairs.

U. O. R. to H. D., No. 7505, dated the 31st October 1946.

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Officer on Special Duty.

The requisite draft Omnibus Bill is sent herewith. The draft is prepared under instructions of H.M. (Law). H.D. is requested to verify whether it is suitable from the administrative point of view.

Preamble and clause 2(2) of the draft Bill.- Section 113 of the City of Bombay Police Act, 1902, empowering the Police officers to disarm persons carrying weapons etc. is in operation at all times. The amendments made in that section by section 3 of Bombay III of 1942, whereby carrying of even sticks is prohibited gives very very wide powers to the Police Officers. It is presumed that it is not intended to re-enact this amendment made by the Governor's Act of 1942. Clause 2(2) does not accordingly provide for re-enactment of section 3 of Bom. III of 1942.

Clause 3(2).- Accordingly to the proposal made in Secretary, H.D.'s note dated the 16th January 1947, at page 107 of H.D. File 9184/ , it will be necessary to substitute the words "in such manner as the Magistrate of the district may direct" for the word "in the same manner" as a municipal tax due by him/ in section 80(1) of the Bombay District Police Act, 1890.

Section 102(1)(b) in Chapter VIII of the Bombay Municipal Boroughs Act, 1925, and section 83(1)(b) in Chapter VIII of the Bombay District Municipal Act, 1901, provide for "an amount or instalment on account of any other tax which now is imposed or hereafter may be imposed." Even a poll tax would be covered by this; section 73 of the former Act, and section 59 of the latter Act permit its levy.

The procedure for recovery as laid down in Chapter VIII of both Acts is quite adequate excepting that it omits arrest and/ imprisonment of the defaulter which is an additional method given in the Land Revenue Code. That one had is in practice rarely effective; and there is no point in imprisoning men of straw. Besides the District Police/ Officer has also/ the Collector under section 88A(1)(b) to recover the amount, and the Collector can make recoveries under the proviso to section 86(1) of the Municipality makes

default.

I think, therefore, that the provision in section 86(1)" in the same manner as a municipal tax due by him" may remain as it is. It must, however, be pointed out that it would be difficult for municipalities to evolve suitable machinery for the assessment and levy of a poll tax. See remarks below on clause 4(2)(a).

As regards new sub-section (13) of section 86 suggested at page 163 of Note, file 2184/6, H.D. is requested to consider whether it is necessary to make provision in respect of the amount recovered before the passing of the proposed Act. In the City Police Act, such provision is necessary to enable the Municipality to credit the balance of the riot tax, since it has to spend the riot tax in connection with certain previous riots.

Clause 3(5).- The provisions for prohibiting assignment etc., of the compensation have been recast on the lines of section 6 of the Workmen's Compensation Act, 1923, these restrictions should ordinarily apply only to compensation in respect of personal injuries they need not apply in respect of loss or damage to property which the person is otherwise entitled to dispose of at his discretion. Proposed section 86A provides accordingly.

Clause 3(4).- There is a provision in section 13 of the Indian Arms Act, 1878, for disarming. Even the provision for disarming in normal times is included in section 113 of the City Police Act. A provision for disarming in disturbed times is necessary. Necessary amendment is therefore proposed in section 48.

Clause 3(5).- This is intended to make a provision in the District Police Act, on the lines of section 113 of the City Police Act. The Home Department may consider whether the proposed provision need be made.

Clause 4(1).- See remarks on clause 3(4).

Clause 4(2)(a) and new section 46 in clause 4(3).- In city of Bombay the position is different. The taxes which could be imposed by the Municipal Corporation have been specified in section 129 of the City of Bombay Municipal Act, 1888.

UVV
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and a poll tax cannot be brought within the scope of that section. Chapter VIII of the Act, lays down the manner of recovery of these taxes only. As desired by H.D. provision has been made for recovery of the riot tax by the Municipal Commissioner in such manner as the Chief Presidency Magistrate may direct. In the absence of any specific provision in the Municipal Act, for the levy and recovery of such tax it is, however, doubtful whether we can direct the municipality to levy a poll tax and recover in a specified manner without amending the Municipal Act. As the Act stands at present the levy of a poll tax is against the scheme but even if the Act is amended to provide for its levy, H.D. is requested to consider whether it would be possible to devise a machinery for collection of the poll tax in a place like Bombay City and whether the Municipal Coproration would be willing to undertake such work. If not, the proposed amendments need not be made. To achieve the object separate chapters may be inserted in the Police Acts or the Municipal Acts may be suitable amended.

Clause 4(3), new section 46B. - See remarks on clause 3(3).

The subject-matter of the Bill falls under entries 1, 3, 15, 16, 35, 37, 45 and 54 in the Provincial Legislative List and entries 4, 8 and 15 in the Concurrent List in the Seventh Schedule to the Government of India Act, 1935.

The Bill requires the recommendation of the Governor under section 82(1)(a) and (3) and his previous sanction under section 108(2)(ii) of the Government of India Act, 1935. It also affects his special responsibility under section 52(1)(a) of the said Act.

The provisions of clauses 3 and 4 i.e. new section 26A in the District Police Act and new section 46B in the City Police Act which provide that the compensation payable to any persons in respect of death or grievous hurt shall not be capable of being assigned, attached or charged are repugnant to the provisions of section 60 of the Civil Procedure Code, 1908, and the Transfer of Property Act, 1882, which are existing Indian Laws, relating to entries

4 and 8 in the Concurrent Legislative List. The Bill will have therefore to be reserved for the consideration of the Governor General with reference to section 107(3) of the Government of India Act, 1935.

The Home Department will no doubt attach a suitable Statement of Objects and Reasons to the Bill, containing Notes on clauses.

Remembrancer of Legal Affairs.

U. R. to H. D., n. 6637, dated the 27th June 1947.

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Legal Department.

The Bombay District Police and the City of Bombay Police(Amendment) Bill, 1947, having been published in the Bombay Government Gazette dated the 3rd October 1947 the Home Department papers are retured to that Department for further necessary action and for submitting them to L.& J.(Home) for his use at the time of introducing the Bill in the Bombay Legislative Assembly.

2. The subject-matter of the Bill falls under entries 1, 2, 10, 16, 23, 33, 37, 39, 40, 46 and 49 in List II and entries 2, 4, 8 and 10 in List III in the Seventh Schedule to the Government of India Act, 1935.

3. The Bill requires the recommendation of the Governor under section 82(1)(b) of the said Act. The requisite form in that behalf is attached herewith.

4. The provisions in clauses 3 and 4 viz. new section 80A in the District Police Act and new section 66(3) in the City Police Act which provide that the compensation payable to any persons in respect of death or grievous hurt shall not be capable of being attached are repugnant to the provisions of section 60 of the Civil Procedure Code, 1908, which is an existing law relating to entry 4 in the Concurrent Legislative List. The Bill will therefore have to be reserved for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. The Home Department is now requested to arrange to give notice to the Secretary to the Bombay Legislative Assembly in the appended form. That Department is also requested to obtain the orders of Government in due course regarding the application of the proposed Act to the partially excluded areas in the Province of Bombay.

Remembrancer of Legal Affairs.

L. & J. to H. D., No. 1252, dated the 6th October 1947.

ax to which they are added forms a charge under section 218 f the City of Bombay Municipal Act. No further amendment, herefore, is necessary in the Bill for this purpose.

2. The view taken by the Municipal Commissioner in this ehalf in his letter dated 9th October 1947 is not correct. he judgment in suit No. 65 of 1933, on which the Commissioner as based his conclusion, has no relevance to the question is sued. In that indirect judgment the point which was raised or the consideration of the High Court was whether a certain ompany called the Kasturchand Mills Ltd.] could be liable o pay charges in respect of the water dues supplied to the ill premises of the company after the possession of the Mill remises of third party. The facts briefly were that the said asturchan Mills Co.,Ltd., went in liquidition andin the winding up of the said Company certin claims were preferred by the Bombay Municipality as preferential creditors under section 230 of the Indian Companies Act. One of the claims was in respect of water dues supplied to the mill premises for the perod from 1st April, 1933 to 31st March 1934. It had happened that the Mills Co., when working as locked debentures and, under the powers contained in a trust deed made in respect of such debentures, the trustees had taken possession of the mill premises on 20th September 1933. The question arose whether, under these circumstances the Mills Co., could be held liable for the water charges supplied to the Millpremises for the period from 1st October 1933 to 31st March 1934, when the possession of the premises was not withthe company but with the trustees. The court held, after considering the provisions of sub-section (3) of section 169 of the City of Bombay Municipal Act, that there was nothing in this sub-section or in any other provision of the Act which made the company liable for the water charges supplied to the premises for the period after the company ceased to be in possession. The ~~maximum~~ question considered and decided in the case, therefore, was whether a particulnr person was liable in law for the payment of the water dues supplied during a particular period and not whether such water charges formed or not a charge on thepremises. This judgment,

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Office of the R. L. A.

Sub-section (1) of the new section 45 in the Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902, provides for the determination of the amount of the compensation by the Chief Presidency Magistrate which in his opinion should be paid to persons who have suffered by reason of a riot. Sub-section (2) of the said section provides that the Chief Presidency Magistrate may require, in the City of Bombay, the Municipal Commissioner to recover such amount and an additional sum not exceeding three per cent. of such amount generally from all persons who are inhabitants of any particular area or specially from any particular section or sections or class or classes of such persons and in such proportions as the Chief Presidency Magistrate may direct. Sub-section (3) of the said section then goes on to provide that the Chief Presidency Magistrate may require the Municipal Commissioner to recover such amount and the additional sum by a additional to the general tax which shall be imposed and levied in all or such of the municipal wards, sub wards or sections thereof as the Chief Presidency Magistrate may direct, and that every addition to the general tax imposed under this sub-section shall be recovered by the Municipal Commissioner from each person liable therefor in the same manner as the general tax due from him. Under section 140 of the City of Bombay Municipal Act, 1888, a general tax is a property tax within the meaning of that section. Section 143 provides that such general tax shall be levied on all building and lands in the city. Section 212 of the Act (which is one of the sections under the heading "Collection of taxes") provides that a property tax due under the Act in respect of any building or land shall be a first charge upon the said building or land. Reading all these provisions together, it is clear that, where the Chief Presidency Magistrate makes a direction under section 45(3) for the recovery of the amount of compensation and the additional sum by an additionto the general tax, the shall form a charge on the buildings or lands on which the general

thus, is irrelevant for holding that the amount of compensation will not form a charge on buildings or lands under section 212 of the City of Bombay Municipal Act. The remark in that judgment that section 169(3) only provide for the method of recovery of the dues when they become payable and does not make the dues, water-tax has no bearing upon the point in issue.

3. The same remarks apply in the case of the amount of cost of police recoverable under the new section 9A(3).

Remembrancer of Legal Affairs.

U. R. to H. D. . No. 13008, dated the 16th December 1947

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No. 11055

Legal Department,
Bombay Castle, 4th December 1947.

From
P. M. Lad, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To
The Private Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, the authentic copy of the Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902 which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 16th and the 20th October 1947, respectively.

2. The subject-matter of the Bill falls under entries 1, 3, 13, 18, 33, 35, 37, 39, 42, 45 and 54 in List II and entries 2, 4, 8 and 15 in List III in the Seventh Schdule to the Government of India Act, 1935.

3. The provisions in clauses 3 and 4 viz. new section 26A in the Bombay District Police Act, 1890, and new section 46(3) in the City of Bombay Police Act, 1902, which provide that the compensation payable to any person in respect of death or grievous hurt shall not be capable of beingattached are repugnant to the provisions of section 60 of the Civil Procedure Code, 1908, which is an existing law relatingto entry 4 in the Concurrent Legislative List. It is therefore, necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

4. I also forward herewith six copies of each of the items Nos. 1 to 3 and two copies of item No. 4 of the papers noted in the margin. The Bill was not referred to a Select Committee.

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1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.

2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.

3. Bill as read for the third time and passed by the Bombay Legislative Council.

4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 16th October 1947 and of the Bombay Legislative Council dated the 20th October 1947.

I have the honour to be,

Sir,

Your most obedient servant,

Secretary to Government

through

The Secretary to the Government of Bombay,

Home Department.

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No. P. S. G. - 5776.
Office of the Private Secretary to the Governor,
Government House,
Bombay Castle, 15th December, 1947.

From

L. E. Bagshawe, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislature Department,
Council Hall, Bombay.

Subject:- The Bombay District Police and the City o
Bombay Police (Amendment) Bill. 1947.

Sir,

With reference to the above mentioned Bill which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 16th and 20th October 1947, respectively. I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as the provisions in clause 3 and 4, viz. new section 26A in the Bombay District Police Act, 1890, and new section 46(3) in the city of Bombay Police Act, 1902, which provide that the compensation payable to any person in respect of death or grievous hurt shall not be capable of being attached are repugnant to the provisions of section 60 of the Civil Procedure Code, 1908, which is an existing law relating to entry 4 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of Government of India Act, 1935. His Excellency the Goveror is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of His Excellency the Governor-General.

Your obedient servant,

L. E. Bagshawe,

Private Secretary to the Governor of Bombay.

No. P. S. G. 5777.
Office of the Private Secretary to the Gover
Government House,
Bombay 15th December 1947.

Copy forwarded with compliments for information to

(1) The Secretary to Government, Legal Department, with refere his letter No. 11638, dated the 4th December 1947;

(2) The Secretary to Government, Home Department, with referen to his endorsement No. 9164/4-D, dated the 8th December, 1947.

By order of the Governor of Bombay,

Private Secretary to the Governor of Bombay.

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No. PSG.

Government House,

Bombay, 17th January 1948.

From

L. M. Nadkarni, Esquire, I. C. S.,

Private Secretary to the Governor of Bombay

To

The Secretary to Government,
Legal Department, Bombay.

Subject:- The Bombay District Police and the City of Bombay Police (Amendment) Bill, 1947.

Sir,

With reference to the correspondence ending with this office endorsement No. PSG. 5777, dated the 13th December 1947, on the above subject, I am directed to inform you that His Excellency the Governor-General has, under the provisions of sub-section (1) of section 76 of the Government of India Act, 1935, assented to the Bombay District Police and the City of Bombay Police (Amendment) Bill, 1947, on the 18th January 1948.

2. The authentic copy of the Bill with His Excellency's assent signified thereon is returned herewith.

Your obedient servant,

Private Secretary to the Governor of Bombay.

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Bills

A Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 84-L
Council Hall, Poona 1st October 1947.

RESOLUTION .- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette dated the 3rd October 1947, as Bill No. LV of 1947.

2. The Bill and Statement of Objects and Reasons should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 7th October 1947.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

S. B. Palekar,
Deputy Secretary to Government.

To

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Bombay Legislature Deptt., for distribution to the Members of the Bombay Legislative Assembly and 45 copies for the use of the Legal Department and 20 copies for the use of the Home Department,

The Home Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity of Bombay,
} with a copy of the Bill and S. O. R.

J With five extra copies of the Bill.

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Acts.

Publication of the Bombay District Police and the City of B mbay Police (Amendment) Act, 1947.

VERNMENT OF BOMBAY
Legal Department,
Resolution No. 719
Bombay Castle, 20th January 1948.

Letter to the Private Secretary to the Governor, No. 11638, dated the ~~17th January 1947~~ 4th December 1947.

Letter from the Private Secretary to the Governor, No. P.S.G. 214, dated the 17th January 1948.

"With reference to the correspondence ending with this office endorsement No. PSG. 5777, dated the 13th December 1947, on the above subect, I am directed to inform you that His Excellency the Governor-General has, under the provisions of sub-section (1) of section 76 of the Government of India Act, 1935, assented tothe Bombay District Police and the City of Bombay Police (Amendment) Bill, 1947, on the ~~23rd~~ 8th January, 1948.

2. The authentic copy of theBill with His Excellency's assent signified thereon is returned herewith.

RESOLUTION. - The law should be published as Bombay Act No. LIX of 1947 in the Bombay Government Gazette dated the 20th January 1948.

2. The Act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari secirps) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By order of the Governor of Bombay,

S.L.Choudhari.
Assistant Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 gazette copies of the Act may be forwarded to the Legal Department.),
The Home Department,
@ The Oriental Translarot to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay,
The Enquiry Officer for the Secretariat, Bombay.
} with a copy of the Act.

@ with five extra copies of the Act.

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STATEMENT OF OBJECTS AND REASONS.

Section 6 of the Bombay District Police Act as it stands at present does not make it clear whether it is permissible for Government to appoint more than one Additional District Superintendent of Police in a District. Secondly, it does not empower the Additional District Superintendent of Police to exercise all the powers of the District Superintendent of Police under any other law nor does it permit a District Superintendent of Police to delegate all or any of the powers conferred upon him under Acts other than the District Police Act, to an Assistant or Deputy Superintendent of Police. It is therefore proposed to amend section 6 of the Act with a view to removing these defects.

2. The amount of compensation awarded by the Chief Presidency Magistrate under section 45 of the City of Bombay Police Act, 1902, is recovered by the Municipal Commissioner by an addition to the general tax. The Bombay Municipal Coporation has been representing to Government that it should be allowed to levy a surcharge on the amount of compensation so awarded by the Chief Presidency Magistrate in order to cover the cost of collection and also to make up for the deficits due to short recoveries resulting from bankruptcy of a ratepayer, absonding of a lessee, and other causes. While examining this question, Government has taken the opportunity to review the entire system of assessment, recovery, and award of riot compensation and has decided, with a view to placing the syatem on a sound footing, to amend sections 45 and 46 of the said Act, so as to provide for —

(1) Levy by the Municipal Commissioner of a surcharge of 5 percent on theamount of compensation awarded by the Chief Presidency Magistrate to cover the cost of collection and short recoveries;

(2) Granting of exemption from the riot tax by theChief Presidency Magistrate to different classes of persons subject to the orders of the Provincial Government;

(3) Making compensation awards non-transferable and non-

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attachable under a decree or order of any court;

(4) Payment of the tax collected by the Municipal Commissioner to the Chief Presidency Magistrate at intervals of three months and distribution by the Chief Presidency Magistrate of the amount in such manner and in such order of preference between the different classes of awardees as he may deem fit;

(5) Discharge of the functions of the Chief Presidency Magistrate under section 46 subject to the general or special order of the Provincial Government; and

(6) Appropriation by the Municipality, with restrospective effect, of the excess amounts if any, recovered by it as riot taxes.

It has also been found desirable not to restrict the method of recovering these amounts to an addition to the general property tax.

It is also proposed to make provisions similar to those suggested in items (1) to (5) above in the Bombay District Police Act.

3. Certain classes of persons purchase tickets of admission to cinema theatres and sell them at higher rates outside the theatre to persons who are unable to get tickets for a particular show. This evil practice having existence for a long period and it is found expedient to take power to prohibit the re-sale of cinema tickets and to make the offence of contravention of rules made in that behalf cognizable.

4. It is found expedient that the Police should have powers to arrest without a warrant persons, who contravene the orders issued under sections 43 and 44 of the District Police Act and sections 33 and 37 of the City of Bombay Police Act or who commit offences under section 61-D and 118 of the District and City Police Acts respectively. It is therefore proposed to make these offences cognizable. Provision has also been made for disarming persons carrying weapons and levying a redemption fee for redeeming the weapons.

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5. It is considered necessary to provide for the employment of additional police at the cost of inhabitants of any areas of Greater Bombay which appear to be in a disturbed or dangerous state. A corresponding provision already exists in section 25 of the District Police Act for the rest of the Province. The procedure for the recovery of the cost of such additional police has been assimilated to the procedure for the recovery of compensation dealt with in paragraph 2.

6. In order to strengthen the administrative machinery for the effective enforcement of prohibition it is considered necessary to take ~~ob~~ certain measures. These measures include:- (1) enhancement of punishment for the offence of being drunk or incapable of taking care of oneself or behaving in a disorderly manner under the influence of drink in any street, thoroughfare, or public place and (2) externment of persons convicted of excise offences.

7. In order to check effectively the sale or consumption of liquor in places of public entertainment it is proposed to delete the second proviso to section 22(1) of the City of Bombay Police Act so that a police licence will be required for keeping open all places of public entertainment irrespective of their hours of working whether by day or night. It is also proposed to penalise the licensee of a place of public entertainment for the acts or omissions of his servant or other agent.

8. Whenever there is rioting or disorder simultaneously in different parts of the City of Bombay, it is impossible for the officer in charge of a section to be present at every place within his section where it may be necessary to disperse an unlawful assembly. This defect in section 40 of the City of Bombay Police Act, 1902, has repeatedly come to notice whenever there are riots in the city. It is, therefore, proposed to amend section 40 to empower selected Police Officers not below the rank of Sub-Inspector to disperse an unlawful assembly.

9. Unlike section 103 of the Code of Criminal Procedure, ~~1898~~ 1898, section 104 of the City of Bombay Police Act, 1902, contains no provision for the ~~issue~~ issue of an order in wri-

ting requiring persons to serve as Panchs, and for punishment of persons refusing to serve as Panchas. As a result, the Bombay City Police find it difficult, to persuade respectable persons to serve as Panchas and are forced to rely on persons whos evidence is frequently discredited by the High Courts. In 1944 the High Court criticised the Bombay City Police for using persons of poor sta us as Panchas. To obviate this very unsatisfactory st te of affairs and to facilitate the work of the City Police it is proposed to insert a penal clause in section 104 of the City of Bombay Police Act, 1902, on th lines of secti n 103 of the Code of Criminal Procedure, 1898.

10. It is proposed to re-enact the following secti ns of the Acts passed during the section 93 regime.:-

1. Section 2 and 3 of the Bombay District Police and the City of Bombay Police (Amendm nt) Act, 1941;
2. Section 2 of the City of Bombay Police (Amendment) Act, 1942; and
3. Section 2 of the Bombay District Police (Amendment) Act, 1944.

(Signed) Morarji Desai.

Dated 1st October 1947.

By order of the Governor of Bombay,

P. H. Lad,
Secretary to the Government of Bombay,
Legal Department,

Poona, dated the 1st October 1947.

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Act LIX

L. A. Bill No. LV OF 1947.

A Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902.

(As read for the third time and passed by the Legislative Assembly on the 16th October 1947.)

26 Geo. 5, Ch. 2. Bom. XIII of 1941. Bom. III of 1942. Bom. II of 1944.

WHEREAS in view of the provisions of sub-section (*4*) of section 93 of the Government of India Act, 1935, it is expedient to repeal the Bombay District Police and the City of Bombay Police (Amendment) Act, 1941, and to re-enact sections 2 and 3 thereof, to repeal the City of Bombay Police (Amendment) Act, 1942, and to re-enact section 2 thereof and to repeal the Bombay District Police (Amendment) Act, 1944, and to re-enact section 2 thereof;

Bom. IV of 1890. Bom. IV of 1902.

AND WHEREAS it is expedient to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay District Police and the City of Bombay Police (Amendment) Act, 1947.

Repeal of Bom. XIII of 1941, Bom. III of 1942 and Bom. II of 1944, and re-enactment of certain provisions thereof.

Bom. XIII of 1941. Bom. III of 1942. Bom. II of 1944.

2. (*1*) The Bombay District Police and the City of Bombay Police (Amendment) Act, 1941, the City of Bombay Police (Amendment) Act, 1942, and the Bombay District Police (Amendment) Act, 1944, are repealed.

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(2) Sections 2 and 3 of the Bombay District Police and the City of Bombay Police (Amendment) Act, 1941, section 2 of the City of Bombay Police (Amendment) Act, 1942, and section 2 of the Bombay District Police (Amendment) Act, 1944, are re-enacted. 5 Bom. XIII of 1941. Bom. III of 1942. Bom. II of 1944.

Amendment of sections 6, 25A, 26, 42, 46 and 61 of, substitution of section 26A of, and insertion of new sections 39AB, 51AA, 61AA, 61DD and 65A in, Bom. IV of 1890.

3. In the Bombay District Police Act, 1890, Bom. IV of 1890.—

(1) in sub-section (1) of section 6,—

(i) for the words "an Additional Superintendent" where they occur for the first time the words "and one or more Additional Superintendents" shall be substituted; and

(ii) after the words "this Act" wherever they occur, the words "or under any other law for the time being in force" shall be inserted;

(2) in section 25A,—

(a) in clause (c) of sub-section (1), after the word "amount" the words "and a sum not exceeding three per cent. of such amount" shall be inserted;

(b) after sub-section (4), the following new sub-section shall be inserted, namely :—

Commissioner and District Magistrate to act under orders of Provincial Government.

"(4A) The Commissioner and the Magistrate of the district shall discharge their functions under this section subject to any general or special orders of the Provincial Government in this behalf.";

(3) in section 26, after sub-section (1) the following new sub-sections shall be inserted, namely :—

Municipality or Collector to pay amount recovered every three months.

"(1A) The municipality or the Collector, as the case may be, shall every three months pay the amount recovered by it or him to the Magistrate of the district.

Amount of compensation to be paid to District Magistrate, balance to be credited to municipal fund.

(1B) Out of the total amount recovered by the municipality a sum equivalent to the amount of the compensation determined under clause (a) (i) of sub-section (1) of section 25A shall be paid to the Magistrate of the district and the balance, if any, shall be credited to the municipal fund constituted under section 51 of the Bombay District Municipal Act, 1901, or section 65 of the Bombay Municipal Boroughs Act, 1925, as the case may be.";

Bom. III of 1901. Bom. XVIII of 1925.

(4) for section 26A, the following section shall be substituted, namely :—

Compensation in respect of death or grievous hurt not to be assigned, attached or charged.

"26A. The compensation payable to any person under section 25A in respect of death or grievous hurt shall not in any way be capable of being assigned or charged or be liable to attachment or to pass to any person other than the person entitled to it by operation of law, nor shall any claim be set off against the same."

(5) after section 39AA the following new section shall be inserted, namely :—

"39AB. With the previous sanction of the Provincial Government, the Magistrate of the district may from time to time make rules regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement." ; Rules for regulating or prohibiting sale of tickets or passes for admission to places of public amusement.

(6) to sub-section (1) of section 42, the following shall be added, namely :—

"If any person goes armed with any such weapon or carries any corrosive substance or explosive or missile in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive or missile shall be liable to be seized from him by any police-officer and the weapon, corrosive substance, explosive or missile so seized shall be forfeited to the Provincial Government." ;

(7) in section 46,—

(i) in sub-section (4) after the words "Indian Penal Code" the following shall be inserted, namely :—

"or under section 43 of the Bombay Abkari Act, 1878, or under section 9 of the Opium Act, 1878, or under Chapter III of the Dangerous Drugs Act, 1930," ;

Bom. V of 1878. I of 1878. II of 1930.

(ii) after sub-section (5) the following new sub-section shall be inserted, namely :—

"(6) The Magistrate of a district or a sub-divisional Magistrate may also by an order in writing duly signed in the manner prescribed in sub-section (3) direct any person who has been thrice convicted within a period of three years of any offence punishable under the Bombay Abkari Act, 1878, or the Opium Act, 1878, or the Dangerous Drugs Act, 1930, to remove himself in like manner from the district and not to enter the same." ; Removal of habitual offenders.

Bom. V of 1878. I of 1878. II of 1930.

(8) after section 51 the following new section shall be inserted, namely :—

"51AA. A police officer may arrest without warrant any person who— Power to arrest without warrant.

(a) contravenes an order made under section 42 or 46, or

(b) commits an offence punishable under section 61D or 65A." ;

(9) in clause (1) of section 61, sub-clause (p) shall be deleted ;

(*10*) after section 61, the following new section shall be inserted, namely :—

Punishment for being drunk and for disorderly behaviour.

"61AA. Whoever in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access—

(*1*) is drunk and incapable of taking care of himself, or

(*2*) behaves in a disorderly manner under the influence of drink,

shall, on conviction, be punishable,—

(*i*) for an offence under clause (*1*),—

(*a*) for a first offence, with imprisonment for a term which may extend to one month and with fine which may extend to two hundred rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than seven days and fine shall not be less than twenty-five rupees and

(*b*) for a subsequent offence, with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees ; and

(*ii*) for an offence under clause (*2*),—

(*a*) for a first offence, with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees ; and

(*b*) for a subsequent offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and fine shall not be less than five hundred rupees " ;

(*11*) after section 61D, the following new section shall be inserted, namely :—

Carrying weapon without authority.

"61DD. Whoever not being a member of His Majesty's forces and acting as such or a police officer, goes armed with any sword, spear, bludgeon, gun or other offensive weapon, in any street or public place,

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"unless by lawful authority, shall be liable to be disarmed by any police-officer, and the weapon or weapons so seized shall be forfeited to the Provincial Government, unless redeemed within two months by payment of such fine not exceeding five hundred rupees as the Magistrate of the district imposes." ;

(*12*) after section 65 the following new section shall be inserted, namely :—

"65A. Whoever contravenes any rule made under section 39AB shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both." Penalty for contravening rules under section 39AB.

Bom. IV of 1902.

4. In the City of Bombay Police Act, 1902,— Insertion of new sections 9A and 122A in, amendment of sections 22, 23, 27, 33, 40, 104, 122, 127 and 136 of, and substitution of new sections for sections 45, 46 and 46A of, Bom. IV of 1902.

(*1*) after section 9 the following new section shall be inserted, namely :—

"9A. (*1*) The Provincial Government may from time to time, by notification in the Official Gazette, direct the employment of additional police for such period as it shall think fit in any area in Greater Bombay which appears to it to be in a disturbed or dangerous state, or in which the conduct of the inhabitants or of any particular section of the inhabitants, in its opinion, renders it expedient temporarily to increase the strength of the police. Employment of additional police in cases of special danger to public peace.

(*2*) The Provincial Government may require—

(*a*) in the City of Bombay, the Municipal Commissioner, the Collector or any other authority,

(*b*) in an area outside the City of Bombay but within the limits of a municipality, the municipality, the Collector or any other authority, and

(*c*) in an area outside the City of Bombay and not within the limits of a municipality, the Collector or any other authority

to recover either in whole or in part the cost of such additional police and where the Municipal Commissioner or the municipality is required to recover such cost an additional sum not exceeding three per cent. of the amount of such cost, generally from all persons who are inhabitants of the area to which such notification applies

or specially from any particular section or sections, or class or classes of such persons, and in such proportions as the Provincial Government may direct.

(3) (*i*) The Provincial Government may require the Municipal Commissioner to recover such cost and the additional sum by an addition to the general tax which shall be imposed and levied in all or such of the municipal wards, sub-wards or sections thereof, as the Provincial Government may direct. Every addition to the general tax imposed under this sub-section shall be recovered by the Municipal Commissioner from each person liable therefor in the same manner as the general tax due from him. The provisions of sections 147 and 148 of the City of Bombay Municipal Act, 1888, shall apply to any such addition as if it were part of the general tax levied under the said Act. Bom. III of 1888.

(*ii*) The Provincial Government may also require the Municipal Commissioner to recover such cost and the additional sum from each person liable therefor under sub-section (2) in such manner as the Provincial Government may direct.

(4) The Provincial Government may require a municipality outside the City of Bombay to assess and recover such cost and the additional sum by a tax or by a rate which the municipality shall impose and levy from such persons, sections or classes of persons and in such proportions as the Provincial Government may direct. Every tax or rate so imposed and levied shall be recovered by such municipality from each person liable therefor in the same manner as a municipal tax due by him :

Provided that where a municipality makes default in imposing and levying any such tax or rate or in making any such recovery, the Provincial Government may direct the Collector to impose and levy such tax or rate or to make such recovery.

Every such tax or rate imposed and levied by the Collector shall be recoverable by the Collector as if it were an arrear of land revenue due by the person liable therefor.

(5) Every amount recoverable by the Collector or other authority under this section shall be recoverable as if it were an arrear of land revenue due by the person liable therefor.

(6) It shall be lawful for the Provincial Government by order to exempt any person from liability to bear any portion of the cost of such additional police.

(7) Out of the total amount recovered by the Municipal Commissioner or by the municipality under sub-section (3) or (4) whether before or after the coming into operation of the Bombay District Police and the City of Bombay Police (Amendment) Act, 1947, the amount of cost shall be paid to the Provincial Bom. of 1947.

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Government and the balance, if any, shall be credited to the municipal fund constituted under section 111 of the City of Bombay Municipal Act, 1888, or section 51 of the Bombay District Municipal Act, 1901, or section 65 of the Bombay Municipal Boroughs Act, 1925, as the case may be. Such amount of cost shall be paid to the Provincial Government every three months.

Bom. III of 1888. Bom III of 1901. Bom. XVIII of 1925.

Explanation.—In this section the expression 'inhabitants' when used with reference to any area includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area and landlords who themselves or by their agents or servants collect rent from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein." ;

(2) in sub-section (7) of section 22,—

(*i*) the word "and" at the end of clause (*g*) shall be deleted ;

(*ii*) after clause (*g*) the following new clause shall be inserted, namely :—

"(*gg*) regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement ; " ;

(*iii*) the second proviso and the word "firstly" in the first proviso shall be deleted ;

(3) to clause (*a*) of sub-section (2) of section 23, the following shall be added, namely :—

"and if any person goes armed with any such weapon or carries any corrosive substance or explosive in contravention of such prohibition, he shall be liable to be disarmed or the corrosive substance or explosive shall be liable to be seized from him by any Police officer and the weapon or corrosive substance or explosive so seized shall be forfeited to the Provincial Government ; " ;

(4) in section 27,—

(*i*) to sub-section (2) the following shall be added, namely :—

"or under the Bombay Abkari Act, 1878, or the Opium Act, 1878, or the Dangerous Drugs Act, 1930: " ;

Bom. V of 1878. I of 1878. II of 1930.

(*ii*) in sub-section (2*A*) after the words "Indian Penal Code" the following shall be inserted, namely :—

"or under section 43 of the Bombay Abkari Act, 1878, or section 9 of the Opium Act, 1878, or Chapter III of the Dangerous Drugs Act, 1930" ;

Bom. V of 1878. I of 1878. II of 1930.

(*5*) to section 33 the following new clause shall be added, namely :—

" (*k*) any person who—

(*i*) contravenes a rule made under clause (*gg*) of sub-section (*1*) of section 22 or an order made under section 23 or 27 ; or

(*ii*) commits an offence punishable under section 112. " ;

(*6*) in section 40,—

(*i*) in sub-section (*1*) after the words " officer in charge of a section " the words " or any Police officer not below the rank of a sub-inspector authorised in this behalf " shall be inserted ; and

(*ii*) in sub-section (*2*) after the words " officer in charge of a section " the words, brackets and figure " or any Police officer authorised under sub-section (*1*) " shall be inserted ;

(*7*) for sections 45, 46 and 46A of the said Act, the following shall be substituted, namely :—

Compensation for injury caused by unlawful assembly how recoverable.

" 45. (*1*) The Chief Presidency Magistrate may, after such inquiry as he deems necessary, determine the amount of the compensation which, in his opinion, should be paid to any person or persons in respect of any loss or damage caused to any property, or in respect of death or grievous hurt caused to any person or persons, by anything done in the prosecution of the common object of an unlawful assembly.

(*2*) The Chief Presidency Magistrate may require—

(*a*) in the City of Bombay, the Municipal Commissioner, the Collector or any other authority,

(*b*) in an area outside the City of Bombay but within the limits of a municipality, the municipality, the Collector or any other authority, and

(*c*) in an area outside the City of Bombay and not within the limits of a municipality, the Collector or any other authority.

to recover either in whole or in part such amount and where the Municipal Commissioner or the municipality is required to recover such amount an additional sum not exceeding three per cent. of such amount generally from all persons who are inhabitants of any particular area or specially from any particular section or sections, or class or classes of such persons, and in such proportions as the Chief Presidency Magistrate may direct.

(*3*) (*i*) The Chief Presidency Magistrate may require the Municipal Commissioner to recover such amount

and the additional sum by an addition to the general tax which shall be imposed and levied in all or such of the municipal wards, sub-wards or sections thereof, as the Chief Presidency Magistrate may direct. Every addition to the general tax imposed under this sub-section shall be recovered by the Municipal Commissioner from each person liable therefor in the same manner as the general tax due from him. The provisions of sections 147 and 148 of the City of Bombay Municipal Act, 1888, shall apply to any such addition as if it were part of the general tax levied under the said Act.

Bom. III of 1888.

(*ii*) The Chief Presidency Magistrate may also require the Municipal Commissioner to recover such amount and the additional sum from each person liable therefor under sub-section (*2*) in such manner as he may direct.

(*4*) The Chief Presidency Magistrate may require the municipality outside the City of Bombay to assess and recover such amount and the additional sum by a tax or by a rate which the municipality shall impose and levy from such persons, sections or classes of persons and in such proportions as the Chief Presidency Magistrate may direct. Every tax or rate so imposed and levied shall be recovered by such municipality from each person liable therefor in the same manner as a municipal tax due by him :

Provided that where a municipality makes default in imposing and levying any such tax or rate or in making any such recovery, the Provincial Government may direct the Collector to impose such tax or rate or to make such recovery.

Every tax or rate imposed and levied by the Collector shall be recoverable by the Collector as if it were an arrear of land revenue due by the person liable therefor.

(*5*) Every amount recoverable by the Collector or other authority under this section shall be recoverable as if it were an arrear of land revenue due by the person liable therefor.

(*6*) Out of the total amount recovered by the Municipal Commissioner or by the municipality under sub-section (*3*) or (*4*), whether before or after the coming into operation of the Bombay District Police and the City of Bombay Police (Amendment) Act, 1947, a sum equivalent to the amount of the compensation shall be paid to the Chief Presidency Magistrate and the balance, if any, shall be credited to the municipal fund constituted under section 111 of the City of Bombay Municipal Act, 1888, or section 51 of the Bombay District Municipal Act, 1901, or

Bom. of 1947.

Bom. III of 1888.

Bom. III of 1901.

sect on 65 of the Bombay Municipal Boroughs Act, 1925, as the case may be. Such amount shall be paid to the Chief Presidency Magistrate every three months. Bom. XVIII of 1925.

(7) It shall be lawful for the Chief Presidency Magistrate, by order, to exempt any persons from liability to pay any portion of such compensation.

Explanation.—In this section the expression "inhabitants" when used with reference to any area includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area and landlords who themselves or by their agents or servants collect rent from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

Chief Presidency Magistrate to award or apportion compensation.

46. (1) It shall be lawful for the Chief Presidency Magistrate to award or apportion all or any moneys recovered as compensation under sub-sections (2) to (4) of section 45 to any person or among all or any persons whom he considers entitled to compensation in respect of the loss or damage or death or grievous hurt aforesaid.

(2) No compensation shall be awarded under this section except upon a claim made within one month from the date of the loss, damage, death or grievous hurt as aforesaid, in respect of which such claim is made, and unless the Chief Presidency Magistrate is satisfied that the person claiming compensation, or where such claim is made in respect of the death of any person, that that person also has himself been free from blame in connection with the occurrences which led to the loss, damage, death or grievous hurt as aforesaid.

(3) The compensation payable to any person under section 45 in respect of death or grievous hurt shall not in any way be capable of being assigned or charged or be liable to attachment or to pass to any person other than the person entitled to it by operation of law, nor shall any claim be set off against the same.

(4) No civil suit shall be maintainable in respect of any loss or injury for which compensation has been granted under this section.

Chief Presidency Magistrate to discharge functions under orders of Provincial Government.

46A. The Chief Presidency Magistrate shall discharge his functions under sections 45 and 46 subject to any general or special orders of the Provincial Government in this behalf.";

(8) in section 104,—

(a) to sub-section (1), the following shall be added, namely:—

"and may issue an order in writing to them or any of them so to do.";

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(*b*) after sub-section (*3*), the following new sub-section shall be added, namely :—

"(*4*) Any person, who without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code."; Refusal or neglect to attend and witness search deemed offence. XLV of 1860.

(*9*) in section 113, for the words "ten rupees" the words "five hundred rupees" shall be substituted;

(*10*) in section 122, clause (*a*) shall be deleted;

(*11*) after section 122, the following new section shall be inserted, namely :—

"122A. Whoever in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access— Punishment for being drunk and for disorderly behaviour.

(*1*) is drunk and incapable of taking care of himself, or

(*2*) behaves in a disorderly manner under the influence of drink,

shall, on conviction, be punishable—

(*i*) for an offence under clause (*1*),

(*a*) for a first offence, with imprisonment for a term which may extend to one month and with fine which may extend to two hundred rupees:

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than seven days and fine shall not be less than twenty-five rupees; and

(*b*) for a subsequent offence, with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees; and

(*ii*) for an offence under clause (2)—

(*a*) for a first offence, with imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one month and fine shall not be less than one hundred rupees ; and

(*b*) for a subsequent offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees :

Provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and fine shall not be less than five hundred rupees ;

(*12*) in section 127,—

(*i*) in clause (*i*) the word "and" shall be deleted,

(*ii*) to the said clause (*i*) the following shall be added, namely :—

"and if it be one made under clause (*gg*) be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both." ;

(*13*) to sub-section (*2*) of section 136 the following shall be added, namely :—

"For the purpose of this sub-section any such infringement or evasion by, or conviction of, a servant or other agent acting on behalf of the person to whom the license or written permission has been granted shall be deemed to be infringement or evasion by, or as the case may be conviction of, the person to whom such license or written permission has been granted."

STATEMENT OF OBJECTS AND REASONS.

Section 6 of the Bombay District Police Act as it stands at present does not make it clear whether it is permissible for Government to appoint more than one Additional District Superintendent of Police in a District. Secondly, it does not empower the Additional District Superintendent of Police to exercise all the powers of the District Superintendent of Police under any other law nor does it permit a District Superintendent of Police to delegate all or any of the powers conferred upon him under Acts other than the District Police Act, to an Assistant or Deputy Superintendent of Police. It is therefore proposed to amend section 6 of the Act with a view to removing these defects.

2. The amount of compensation awarded by the Chief Presidency Magistrate under section 45 of the City of Bombay Police Act, 1902, is recovered by the Municipal Commissioner by an addition to the general tax. The Bombay Municipal Corporation has been representing to Government that it should be allowed to levy a surcharge on the amount of compensation so awarded by the Chief Presidency Magistrate in order to cover the cost of collection and also to make up for the deficits due to short recoveries resulting from bankruptcy of a rate-payer, absconding of a lessee, and other causes. While examining this question, Government has taken the opportunity to review the entire system of assessment, recovery and award of riot compensation and has decided, with a view to placing the system on a sound footing, to amend sections 45 and 46 of the said Act, so as to provide for—

(1) Levy by the Municipal Commissioner of a surcharge of 3 per cent. on the amount of compensation awarded by the Chief Presidency Magistrate to cover the cost of collection and short recoveries;

(2) Granting of exemption from the riot tax by the Chief Presidency Magistrate to different classes of persons subject to the orders of the Provincial Government;

(3) Making compensation awards non-transferable and non-attachable under a decree or order of any court;

(4) Payment of the tax collected by the Municipal Commissioner to the Chief Presidency Magistrate at intervals of three months and distribution by the Chief Presidency Magistrate of the amount in such manner and in such order of preference between the different classes of awardees as he may deem fit;

(5) Discharge of the functions of the Chief Presidency Magistrate under section 45 subject to the general or special order of the Provincial Government; and

(6) Appropriation by the Municipality, with retrospective effect, of the excess amounts, if any, recovered by it as riot taxes.

It has also been found desirable not to restrict the method of recovering these amounts to an addition to the general property tax.

It is also proposed to make provisions similar to those suggested in items (1) to (5) above in the Bombay District Police Act.

3. Certain classes of persons purchase tickets of admission to cinema theatres and sell them at higher rates outside the theatre to persons who are unable to get

tickets for a particular show. This evil practice has been in existence for a long period and it is found expedient to take power to prohibit the re-sale of cinema tickets and to make the offence of contravention of rules made in that behalf cognizable.

4. It is found expedient that the Police should have powers to arrest without a warrant persons, who contravene the orders issued under sections 42 and 46 of the District Police Act and sections 23 and 27 of the City of Bombay Police Act or who commit offences under section 61-D and 112 of the District and City Police Acts respectively. It is therefore proposed to make these offences cognizable. Provision has also been made for disarming persons carrying prohibited weapons and levying a redemption fee for releasing the weapons.

5. It is considered necessary to provide for the employment of additional police at the cost of inhabitants of any areas of Greater Bombay which appear to be in a disturbed or dangerous state. A corresponding provision already exists in section 25 of the District Police Act for the rest of the Province. The procedure for the recovery of the cost of such additional police has been assimilated to the procedure for the recovery of compensation dealt with in paragraph 2.

6. In order to strengthen the administrative machinery for the effective enforcement of prohibition it is considered necessary to take certain measures. These measures include :—(1) enhancement of punishment for the offence of being drunk or incapable of taking care of oneself or behaving in a disorderly manner under the influence of drink in any street, thoroughfare, or public place and (2) externment of persons convicted of excise offences.

7. In order to check effectively the sale or consumption of liquor in places of public entertainment it is proposed to delete the second proviso to section 22 (*1*) of the City of Bombay Police Act so that a police licence will be required for keeping open all places of public entertainment irrespective of the hours of working whether by day or night. It is also proposed to penalise the licensee of a place of public entertainment for the acts or omissions of his servant or other agent.

8. Whenever there is rioting or disorder simultaneously in different parts of the City of Bombay, it is impossible for the officer in charge of a section to be present at every place within his section where it may be necessary to disperse an unlawful assembly. This defect in section 40 of the City of Bombay Police Act, 1902, has repeatedly come to notice whenever there are riots in the City. It is, therefore, proposed to amend section 40 to empower selected Police Officers not below the rank of Sub-Inspector to disperse an unlawful assembly.

9. Unlike section 103 of the Code of Criminal Procedure, 1898, section 104 of the City of Bombay Police Act, 1902, contains no provision for the issue of an order in writing requiring persons to serve as Panchas, and for punishment of persons refusing to serve as Panchas. As a result, the Bombay City Police find it difficult, to persuade respectable persons to serve as Panchas and are forced to rely on person whose evidence is frequently discredited by the Courts. In 1944 the High Court criticised the Bombay City Police for using persons of poor status as Panchas. To obviate this very unsatisfactory state of affairs and to facilitate the work of the City Police it is proposed to insert a penal clause in section 104 of the City of Bombay Police Act, 1902, on the lines of section 103 of the Code of Criminal Procedure, 1898.

10. It is also proposed to re-enact the following sections of the Acts passed during the section 93 regime :—

1. Sections 2 and 3 of the Bombay District Police and the City of Bombay Police (Amendment) Act, 1941.

2. Section 2 of the City of Bombay Police (Amendment) Act, 1942 ; and

3. Section 2 of the Bombay District Police (Amendment) Act, 1944.

MORARJI DESAI.

Dated 1st October 1947.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. LV OF 1947]

(As read for the third time and passed by the Legislative Assembly on the 16th October 1947.)

A Bill to amend the Bombay District Police Act, 1890, and the City of Bombay Police Act, 1902.

[Mr. Morarji Desai, M.L.A.]

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